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6	IN THE UNITED STATES DISTRICT COURT		
7	FOR THE DISTRICT OF ARIZONA		
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9	Antonio Gonzalez-Radiya,) CASE NO. 06-CV-187-TUC-FRZ) 04-CR-254-TUC-FRZ	
10	Petitioner,) ORDER	
11	vs.))	
12	United States of America,)	
13	Respondent.		
14	Respondent.)	
15		.)	
16	Petitioner has filed a "Motion for Time Reduction by an Inmate in Federal Custody,		
17	(28 U.S.C. § 2255)."		
18	Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States		
19	District Courts provides, in relevant part, that		
20	[i]f it plainly appears from the motion, any attached exhibits,		
21	and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct		
22	the clerk to notify the moving	ng party.	
23	28 U.S.C. foll. § 2255.		
24	Background		
25	Petitioner entered a plea of guilty to the Indictment, which charged him with entering		
26	and being found in the United States after having been denied admission, excluded, deported,		
27	and removed from the United States, and not having obtained the express consent of the		
28	Attorney General or the Secretary of the	Department of Homeland Security to reapply for	
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admission to the United States, in violation of 8 U.S.C. § 1326, enhanced by 8 U.S.C. § 1326(b)(2).

The Presentence Report calculated Petitioner as having a Total Offense Level 21 and a Criminal History Category V. The Court departed two levels pursuant to § 5K2.0 of the United States Sentencing Guidelines, based on the savings to the government. The Court imposed a sentence of fifty-seven months.

Discussion

In his motion, Petitioner seeks a reduction of his sentence. He contends that his right to equal protection is violated by the fact that deportable alien prisoners, unlike their United States citizen counterparts, are ineligible for a one-year sentence reduction for attending a drug treatment program during incarceration and for early release to a half-way house.

The Ninth Circuit Court of Appeals rejected Petitioner's argument in McLean v. Crabtree, 173 F.3d 1176 (9th Cir. 1999). In that case, the Ninth Circuit found that there was no equal protection violation and held that "excluding prisoners with detainers from participating in community-based treatment programs, and consequently from sentence reduction eligibility, is at least rationally related to the BOP's legitimate interest in preventing prisoners from fleeing detainers while participating in community treatment programs." Id. at 1186.

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Conclusion

Accordingly,

IT IS ORDERED that Petitioner's § 2255 Motion (U.S.D.C. document #35 in CR-04-254-TUC-FRZ) is **DENIED** and this case (CV-06-187-TUC-FRZ) is **DISMISSED**.

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1	IT IS FURTHER ORDERED that the Clerk of the Court SHALL SERVE a copy
2	of the Motion and this Order on Respondent and SHALL SERVE a copy of this Order on
3	Petitioner.
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5	DATED this 20th day of April, 2006.
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7 8	FRANK R. ZAPATA United States District Judge
9	Officed States District Judge
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